

## **REMARKS**

By this amendment, Claims 2-5 are amended. Claims 1-19 are pending.

Claims 2-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Applicant thanks the Examiner for the helpful suggestions. Applicant has amended Claims 2-5 herein to further clarify Applicant's claimed invention. Accordingly, withdrawal of the 35 U.S.C. 112 rejections is respectfully requested.

Claims 2-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Broadbent et al (U.S. 6,985,886) in view of Creamer et al. (U.S. Pub 2002/0138413).

### Broadbent et al.

Broadbent et al., U.S. Patent No. 6,985,886, discloses a method and apparatus for a mortgage loan management system. Specifically, Broadbent et al. discloses an automated system that uses the Federal, State, local and professional regulations and requirements and implementing instructions to generate a plurality of tasks which can be used to control and drive the process of handling a mortgage loan application to completion and settlement in accordance with these regulations. Loan requestors may specify that the system will generate the plurality of required tasks, including tasks required by applicable federal and/or state law, provide the plurality of required tasks to the requester for his execution, and monitor the completion of all required tasks so as to provide a completion certificate to the requestor. Alternatively, loan requestors may specify that the automated system will generate the plurality of required tasks, including tasks required by applicable federal and/or state law, will manage and control the execution of the required tasks, and monitor the completion of all required tasks so as to provide a completion certificate to the requestor. See Abstract.

In the Background section of Broadbent, it is stated, the Federal laws and regulations in question are basically those outlined in the Real Estate Settlement Procedures Act (RESPA) and the Federal Housing and Urban Development's (HUD's) implementing Regulation X; the State regulations in question are those State specific regulations and implementing instructions that

serve a similar purpose, relating to Lender payments to Mortgage Brokers and other settlement service providers. Among other federal laws, the Truth in Lending Act ("TILA") and the Equal Credit Opportunity Act ("ECOA") impact the mortgage loan process. Under the TILA, it is known that certain credit related disclosures are required to be made to the borrower prior to the consummation of a mortgage loan transaction, so that the borrower understands the total cost of the loan. Column 2, lines 3-19.

In implementations of Broadbent et al., the mortgage underwriting process generally follows the following pattern: A borrower, wishing to purchase or improve real property, and usually without the help of experienced advisors, makes a personal determination of the amount of available money generally required for a down payment and his or her ability to repay a loan for the balance. With this personal estimate in mind, a borrower (or buyer) begins a search for property and attends carefully to the costs of said property, making sure that the scope of the search is within the individual's envisioned cash flow constraints and acceptable debt ratios. Generally, individuals seek the professional services of a skilled Real estate sales professional or other agent to aid in the search for suitable property. Concurrent with this search, the individual will often, at the advice of a Real estate sales professional, seek to obtain a pre-approval for an envisioned loan amount, or at least a pre-qualification for a loan. In certain lending models envisioned by the invention of Broadbent et al., loan approvals are accompanied with a 'rate-lock', or an indication by the lending institution of the available interest rate. Until such a commitment is obtained, it is generally not possible for the individual to faithfully commit to the purchase of property. In the current practice, the pre-approval process occurs outside of the Real estate sales professional's control. However, when a loan pre-approval is obtained, the buyer may, in good faith, negotiate with a seller for the purchase of property. Such negotiations are almost always facilitated by the attending Real estate sales professional(s) who represent the buyer and/or seller in the negotiation. When a mutually agreeable price is determined, and terms of the agreement specific to the buyer and seller are negotiated, appropriate documents are signed, such documents constituting a formally offered and accepted 'offer to purchase'. At this time, the lending institution originally issuing the loan pre-approval is contacted to proceed with the loan application. Column 3, line 55 – Column 4, line 25.

The detailed description of Broadbent discloses, all mortgage loans will be originated through the applicants (OnePipeline.com) website. In the future, websites other than OnePipeline.com's will be used to originate loans that will interface with the compliance engine. The technology used as part of the system currently is, and will be, able to interface with many other industry standard software programs to make the exchange and flow of data easy and accurate. The system is predominantly web-enabled, which extends its use to all industry professionals connected to the Internet. The system contains the Compliance Engine that applies Federal, State, Local, and profession based filters to each loan application and each Loan Originator to create a combined task list that defines a custom workflow process for every transaction originated through the System and Program, which forms the basis for monitoring the steps and procedures required for a specific loan transaction in order to provide a completion report for the specific mortgage loan. The rules applied to each new mortgage loan application will determine who is permitted or required to perform which services in the loan origination process under the Program and who will receive fair market compensation for services actually performed. The System then creates a record of the actual workflow. The list, as a composite of compensation or origination tasks and required tasks, is represented as a 'task list', and may optionally be presented to a subscriber client through an API. In an embodiment of the System, the Borrower and Loan Originator work together throughout the loan origination process. Once a Borrower decides to work with a Loan Originator on the System, the System will have the Borrower and Loan Originator answer typical financial and property questions concerning the Borrower. The answers to these questions will allow the System to pre-qualify the Borrower for a loan and offer appropriate loan program options to the Borrower. Once the System makes this information available to the Borrower and Loan Originator, the Borrower will be able to choose to make a formal mortgage loan application on-line through the Loan Originator. After a consultation between the Borrower and Loan Originator, the Borrower will then be able to select a loan program -or request the System to find the most advantageous interest rate available from the various lender options. The System and staff will select a loan product and submit the application to the appropriate lender for approval and distribute on-line results back to the Borrower and Loan Originator, together with a complete set of underwriting conditions.

As described in more detail below, the services actually performed by the Loan Originator, Independent Contractor and/or Local Loan Processors will serve as the basis for the fees earned as fair market compensation for performing settlement services in connection with the mortgage loan origination process under the Program. After each of the above steps are completed, the System will automatically create a workflow process based on the applicable rules and appropriate tasks will be eventually assigned to each of the service providers for the mortgage loan transaction. In a preferred embodiment, the mortgage loan data and applicable tasks will be passed to a workflow generation system, either implemented as an integral part of the system of the invention, or as a service provided by a remote application service provider (ASP), which will generate an automated workflow process which can notify each service provider of his task(s) and allowing each service provider to interact in completing needed tasks. All task assignments will be distributed by the System and tracked. At this point, many people will be working on the loan simultaneously though the System. For example, the Loan Originator may be obtaining financial information from the Borrower, the Independent Contractor may be ordering an appraisal, the Local Loan Processor may be verifying Borrower information, and various service providers may be performing services and adding information to the mortgage loan file through the System. Hard copy data will be input by either OnePipeline's staff, an Independent Contractor (to the extent permitted under state law) or the Local Loan Processor, and added to the physical mortgage loan file. Work notices and status communications may be generated automatically by the System to keep the process moving and to ensure that all appropriate parties perform their assigned tasks in the proper order to meet all rules requirements applicable to the mortgage loan transaction. See Column 8, line 35 – Column 10, line 50.

According to Broadbent et al., Borrowers may obtain a loan using the facilities of the lender organization, in which mode the system of the invention merely determines which tasks are required and tracks the completion of the required tasks. By obtaining a loan through the Program, Borrowers will be given access to a wide variety of first lien, fixed and variable rate, closed-end mortgage products (both purchase money and refinancings) at competitive rates and pricing, and in a timely and efficient manner. For example, as noted above, OnePipeline.com, Inc. will make available to the Borrower, loan products and interest rates that are available from its participating lenders. OnePipeline's System and Program also will make available and support

secondary lien, fixed and variable rate, closed-end loan products and interest rates available from its participating lenders. In the future, OnePipeline may give Borrowers access to first and second lien, fixed and variable rate, open-end mortgage products through the Program. OnePipeline's Program and System will not make available or support mortgage loans that constitute "High Cost" or Section 32 mortgage loans, which are covered by Section 32 of Regulation Z, 12 C.F.R .sctn. 226.3. Column 10, line 51 – Column 11, line 5.

Broadbent also discloses, that the System also will allow a lender to elect to use a standard set of mortgage loan documents, which can be printed off of the System, in connection with a mortgage loan originated through OnePipeline's Program, or the Lender may use its own forms. The forms available off of the System will be provided to OnePipeline by a third-party document vendor. See Column 11, lines 16-38.

In addition, in a preferred embodiment, a Loan Originator will initiate the mortgage loan process with a borrower using OnePipeline's System. The services that a Loan Originator will have to perform, in all cases, in order to be fully compensated include the following: (1) obtaining the applicant's signature on disclosures, (2) obtaining the applicant's signature on the credit authorization, (3) pre-qualifying applicants, (4) assisting applicants in selecting loan products, (5) taking the loan application or obtaining loan application information, (6) reviewing the credit decision with the applicant, (7) explaining the good faith estimate and other disclosures to the applicant, (8) collecting documentation from the applicant that is needed in connection with processing and underwriting the loans, (9) updating the applicant and responding to applicant inquiries, (10) locking the interest rate, and (11) scheduling and attending the closing. If a Loan Originator does not perform all required services, the services will be performed by OnePipeline's staff, Lender's staff, an Independent Contractor (to the extent permitted under applicable state law) or by a Local Loan Processor, and the compensation received by the Loan Originator will be reduced accordingly. See generally, Column 12, line 22 – Column 14, line 3.

Creamer et al.

Creamer et al., U.S. Patent Application Publication No. 2002/0138413 discloses a commercial mortgage closing process. Specifically, Creamer discloses a closing team at block

490 (See FIGS. of Creamer) reviews the final loan documents and prepares the loan closing package and the escrow agreement, and then forwards these documents to the closing agent at block 504. At blocks 492 and 494, the closing team reviews the closing checklist for any outstanding issues. If there are outstanding issues, the loan enters exception management at block 484. If there are no outstanding issues, then the processing of the loan continues at block 496. The title company at block 498 prepares final loan documents for execution and sends them to the closing team. The contract services team at block 500 continues to monitor the status of full-length reports generated by third-party vendors at block 502. The closing agent at block 504 receives from the closing team the closing package, the final loan documents, and the escrow agreement. The borrower reviews the loan documents with final terms at block 506.

FIG. 1K of Creamer describes day 8 of the Quickramp.RTM. expedited loan processing method. The production team at block 510 clears away any final underwriting issues and signs off to close. The closing team receives the draft lender settlement statement from the title company at block 514. At block 516, the closing team sends the settlement statement to the closing agent. At block 518, the closing team submits the loan-funding package to the lender. The title company drafts the settlement agreement and sends it to the closing team at block 520. At block 522, the closing team sends the wiring instructions to the closing agent. The contract services team at block 526 continues to monitor the status of full-length reports generated by third-party vendors at block 528. The closing agent at block 530 receives from the closing team the wiring instructions. At blocks 534 and 536, the closing agent receives the settlement statement and the final loan documents from the closing team. The borrower at block 524 reviews the settlement statement and executes all the documents in conjunction with the closing agent at block 538.

FIG. 1L describes day 9 of the Quickramp.RTM. expedited loan processing method. The production team is idle unless exception management is in process at block 550. The closing team receives the final loan documents and settlement statement at blocks 552 and 554 from the closing agents. At block 556, the closing team reviews the final loan documents and settlement statement for accuracy and completeness. At block 558, a senior team member of the closing team determines if the final loan documents are accurate and complete. If there are problems

with the final loan documents, the closing team returns the documents to the closing agent at block 568. If the documents are accurate and complete, the closing team authorizes the wiring of funds to the closing agent at block 560. At block 562, the closing team authorizes the closing agent to disburse funds. The contract services team at block 564 continues to monitor the status of full-length reports generated by third-party vendors at block 566. The closing agent at block 570 receives from the closing team problems with the accuracy or completeness in the final loan documents or the settlement agreement and revises the final loan documents and settlement agreement to send to the closing team. At block 572, the closing agent receives authorization to disburse funds, and at block 574, the closing agent wires the funds to the borrower's account.

Paragraphs [0055] – [0067].

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Amended Claim 2 is patentable by calling for a method of refinancing a mortgage loan including, among other features, preparing an offer that provides a presentation of documents and disclosures comprising terms of said refinanced mortgage loan, pre-acceptance disclosures and conditions, and instructions describing actions required for said customer to accept said offer, at least one of said terms of said refinanced mortgage loan comprising a specific, locked interest rate; sending said offer for said refinancing to said customer; receiving an indication of acceptance of said offer from said customer, said acceptance being based on the terms of said refinanced mortgage loan, pre-acceptance disclosures and conditions, and the instructions and sending a closing package to said customer to be executed by said customer, including at least one document comprising instructions providing guidance to said customer for completing and executing said closing documents in the absence of a meeting, and creating a refinancing loan agreement, in the absence of a meeting, upon said customer solely executing said closing documents, based on the instructions included in the closing package.

Broadbent, as discussed above, discloses that all mortgage loans will be originated through the applicant's website. The system applies federal, state, local and professional based filters to each loan application and each loan originator to create a combined task list that defines a custom work flow process for every transaction originated through the system and program. This forms the basis for monitoring the steps and procedures required for a specific transaction in order to provide a completion report for the specific mortgage loan. The rules applied to each new mortgage loan application determine who is permitted or required to perform which services in the loan origination process under the program and who will receive fair market compensation for services actually performed. The system then creates a record of the actual work flow. The list is a composite of compensation or origination tasks and required tasks and is presented as a task list.

In the system disclosed by Broadbent, the borrower and loan originator work together throughout the loan origination process. Once a borrower decides to work with the loan originator on the system, the system will have the borrower and loan originator answer typical financial and property questions concerning the borrower. The answers to these questions will allow the system to pre-qualify the borrower for a loan and offer appropriate loan program options to the borrower. Once the system makes this information available to the borrower and loan originator, the borrower will be able to chose to make a formal mortgage loan application on-line through the loan originator. After a consultation between the borrower and the loan originator, the borrower will then be able to select a loan program or request the system to find the most advantageous interest rate available from the various lender options. The system and staff will then select a loan product and submit the application to the appropriate lender for approval and distribute on-line results back to the borrower and loan originator, together with a complete set of underwriting conditions. See generally Col. 8, line 35-Col. 10, line 50.

Broadbent also discloses that borrowers may obtain a loan using the facilities of the lender organization, in which mode the system of the invention merely determines which tasks are required and tracks the completion of the required tasks. By obtaining a loan through the program, borrowers will be given access to a wide variety of first lien, fixed and variable rate,

close-end mortgage products at competitive rates and pricing, and in a timely and efficient manner. See generally Col. 10, line 51-Col. 11, line 5.

The system of Broadbent also allows a lender to elect to use a standard set of mortgage loan documents, which can be printed off of the system, in connection with a mortgage loan originated through the program or the lender may use its own forms. The forms available off the system will be provided to Onepipeline.com by a third party document vendor. Col. 11, lines 16-38. The Broadbent system also discloses that one of the services that a loan originator will have to perform, in all cases, in order to be fully compensated under the disclosed invention include scheduling and attending the closing.

Broadbent does not disclose a method of refinancing as set forth in amended Claim 1 which includes preparing an offer that provides a presentation of terms of the refinanced mortgage loan, pre-acceptance disclosures, and instructions describing how the customer can accept the offer, sending the offer for refinancing to the customer and receiving an indication of acceptance based upon the terms of the refinance mortgage loans, mortgage loan, pre-acceptance, disclosures and instructions. Instead, Broadbent develops a task list that guides a mortgage broker/originator and a borrower through a formal loan application process. The Broadbent system is directed to insuring compliance with relevant regulations for this traditional process. Applicant's invention as claimed does not include a traditional/formal application process. Instead, the borrower is provided an offer which, by its terms, can be accepted, and move toward closing. In addition, the customer in Applicant's method is not selecting from multiple loan options but a single loan. Thus, the process is streamlined over traditional methods such as Broadbent.

Moreover, Broadbent does not disclose sending a closing package to the customer to be executed by the customer based upon the customer's acceptance of the offer and creating a refinancing loan agreement, in the absence of a meeting, upon the customer solely executing the closing package. In comparison, Broadbent generates a task list of steps that must be performed by the loan originator and the borrower to originate a mortgage loan under traditional methods. Furthermore, Broadbent requires the scheduling and attending of a closing by the loan originator,

indicating that the closing documents would be executed at a meeting between the respective parties.

Creamer, as indicated above, discloses that a closing team reviews the final loan documents and prepares a loan closing package and escrow agreement for a borrower and then forwards these documents to a closing agent. The closing agent, as is traditionally understood, would present the closing documents to the borrower for review and execution in a form of a meeting.

Creamer, like Broadbent, does not disclose a method of refinancing a mortgage loan including, preparing an offer that provides a presentation of terms of the refinance mortgage loan, pre-acceptance disclosures, and instructions describing out the customer can accept the offer, the sending of the offer for refinancing to the customer, and receiving an indication of acceptance of the offer from the customer which acceptance is based upon the terms of the refinance mortgage loan, pre-acceptance disclosures and instructions. As best understood by Applicant, Creamer discloses a traditional mortgage origination process. Furthermore, Creamer does not disclose sending a closing package to the customer to be executed by the customer based upon the customer's acceptance of the offer or creating a refinancing loan agreement in the absence of a meeting upon the customer solely executing the closing package. Creamer discloses the use of a closing agent to close a loan.

As set forth above, neither Broadbent nor Creamer disclose all the features of amended Claim 2, nor can these references be combined to show all the features set forth therein. Accordingly, Claim 2, as amended, is patentable over Broadbent and Creamer.

Claims 6-9 depend from Claim 2 and are patentable for the same reasons as Claim 2 and by reason of the additional features set forth in the respective claims.

Claim 3 is similarly patentable by calling for a method of refinancing a mortgage loan including, among other features, preparing an offer that provides a presentation of documents and disclosures comprising terms of said refinanced mortgage loan, pre-acceptance disclosures and conditions, and instructions describing actions required for said customer to accept said

offer, at least one of said terms of said refinanced mortgage loan comprising a specific, locked interest rate; sending said offer for said refinancing to said customer; receiving an indication of acceptance of said offer from said customer, said acceptance being based on the terms of said refinanced mortgage loan, the pre-acceptance disclosures and conditions, and the instructions; sending a closing package to said customer to be executed by said customer, said closing package including, at least one document comprising instructions providing guidance to said customer for completing and executing said closing documents in the absence of a meeting, and creating a refinancing loan agreement, in the absence of a meeting, upon said customer solely executing said closing documents, based on the instructions included in the closing package.

As discussed above, Broadbent and Creamer do not disclose preparing an offer that provides the terms of a refinance mortgage loan, pre-acceptance disclosures and instructions describing how the customer may accept the offer, communicating the offer for refinancing to the customer, receiving an indication of acceptance of the offer from the customer which acceptance is based upon the terms, disclosures and instructions, sending a closing package to the customer to be executed by the customer based upon the acceptance of the offer, and creating a refinancing loan agreement in the absence of a meeting upon the customer solely executing the closing package. Broadbent and Creamer each involve a traditional mortgage origination process and require a closing in which a meeting between the respective parties is involved. Accordingly, amended Claim 3 is patentable over the cited references.

Claims 10 and 13 depend from Claim 3 and are patentable for the same reasons as Claim 3 and by reason of the additional features set forth in the respective claims.

Amended Claim 4 is similarly patentable by calling for a method of refinancing a mortgage loan including, among other features, preparing an offer that provides a presentation of documents and disclosures comprising terms of said refinanced mortgage loan, pre-acceptance disclosures, and instructions describing actions required for said customer to accept said offer, at least one of said terms of said refinanced mortgage loan comprising an interest rate and a term length; sending said offer for said refinancing to said customer; receiving an indication of acceptance of said offer from said customer, said acceptance being based on the terms of said refinanced mortgage loan, the pre-acceptance disclosures, and the instructions; sending a closing

package to said customer to be executed by said customer, said closing package, including at least one document comprising instructions providing guidance to said customer for completing and executing said closing documents in the absence of a meeting, and creating a refinancing loan agreement, in the absence of a meeting, upon said customer solely executing said closing documents, based on the instructions included in the closing package.

As discussed above, Broadbent and Creamer do not disclose preparing an offer that provides the terms of a refinance mortgage loan, pre-acceptance disclosures and instructions describing how the customer may accept the offer, communicating the offer for refinancing to the customer, receiving an indication of acceptance of the offer from the customer which acceptance is based upon the terms, disclosures and instructions, sending a closing package to the customer to be executed by the customer based upon the acceptance of the offer, and creating a refinancing loan agreement in the absence of a meeting upon the customer solely executing the closing package. Broadbent and Creamer each involve a traditional mortgage origination process and require a closing in which a meeting between the respective parties is involved. Accordingly, amended Claim 4 is patentable over the cited references.

Claims 14-17 depend from Claim 4 and are patentable for the same reasons as Claim 4 and by reason of the additional features set forth in the respective claims.

Amended Claim 5 is similarly patentable by calling for a method of refinancing a mortgage loan including, among other features, receiving a request to refinance a mortgage loan from a customer; preparing an offer that provides a presentation of documents and disclosures comprising terms of said refinanced mortgage loan, pre-acceptance disclosures, and instructions describing actions required for said customer to accept said offer, at least one of said terms of said refinanced mortgage loan comprising a specific interest rate and a specific term length; communicating said offer for said refinancing to said customer; receiving an indication of acceptance of said offer from said customer, said acceptance being based on the terms of said refinanced mortgage loan, the pre-acceptance disclosures, and the instructions; sending a closing package to said customer to be executed by said customer, at least one document comprising instructions providing guidance to said customer for completing and executing said closing documents in the absence of a meeting, and creating a refinancing loan agreement, in the absence

of a meeting, upon said customer solely executing said closing documents, based on the instructions included in the closing package.

As discussed above, Broadbent and Creamer do not disclose preparing an offer that provides the terms of a refinance mortgage loan, pre-acceptance disclosures and instructions describing how the customer may accept the offer, communicating the offer for refinancing to the customer, receiving an indication of acceptance of the offer from the customer which acceptance is based upon the terms, disclosures and instructions, sending a closing package to the customer to be executed by the customer based upon the acceptance of the offer, and creating a refinancing loan agreement in the absence of a meeting upon the customer solely executing the closing package. Broadbent and Creamer each involve a traditional mortgage origination process and require a closing in which a meeting between the respective parties is involved. Accordingly, amended Claim 5 is patentable over the cited references.

Claims 18-19 depend from Claim 5 and are patentable for the same reasons as Claim 5 and by reason of the additional features set forth in the respective claims.

With regard to a rejection under Section 103, if the Examiner determines there is factual support for rejecting the claimed invention under 35 U.S.C. 103, the Examiner must then consider any evidence supporting the patentability of the claimed invention, such as any evidence in the specification or any other evidence submitted by the applicant. The ultimate determination of patentability is based on the entire record, by a preponderance of evidence, with due consideration to the persuasiveness of any arguments and any secondary evidence. *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992); MPEP 2142.

The Supreme Court in *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966), stated:

Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject

matter sought to be patented. As indicia of obviousness or nonobviousness, these inquires may have relevancy. . .

In, addition, according to the MPEP, Office policy is to follow *Graham v. John Deere Co.* in the consideration and determination of obviousness under 35 U.S.C. 103. MPEP 2141. As quoted above, the four factual inquires enunciated therein as a background for determining obviousness are as follows:

- (A) Determining the scope and contents of the prior art;
- (B) Ascertaining the differences between the prior art and the claims in issue;
- (C) Resolving the level of ordinary skill in the pertinent art; and
- (D) Evaluating evidence of secondary considerations.

See MPEP 2141.

Objective evidence of secondary considerations such as unexpected results, commercial success, long-felt need, failure of others, copying by others, licensing, and skepticism of experts are relevant to the issue of obviousness and must be considered in every case in which they are present. When evidence of any of these secondary considerations is submitted, the examiner must evaluate the evidence. The weight to be accorded to the evidence depends on the individual factual circumstances of each case. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 231 USPQ 81 (Fed. Cir. 1986), *cert. denied*, 480 U.S. 947 (1987). The ultimate determination on patentability is made on the entire record. *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992); MPEP 2141.

In addition to the foregoing arguments and amendments, Applicant submits herewith a Declaration of Commercial Success in support of the position that the invention is not obvious.

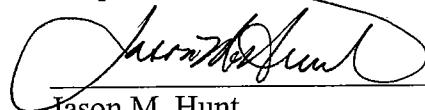
In view of the above amendments, remarks and evidence it is respectfully submitted that this Application is in condition for allowance and such action is earnestly solicited. However, should the Examiner have any further point of objection, the Examiner is urged to contact the

undersigned via telephone so that a mutual agreement with respect to claim limitations can be reached.

Date:

10/30/2007

Respectfully submitted,



Jason M. Hunt  
Registration No. 53,048  
Dorsey & Whitney LLP  
801 Grand Ave., Suite 3900  
Des Moines, IA 50309  
Telephone: (515) 283-1000  
Fax: (515) 283-1060

ATTORNEY FOR APPLICANTS